

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DELAWARE MARKETING PARTNERS,  
LLC, a Delaware limited liability company,

Plaintiff

CA No.: 04-263

v.

JUDGE McLAUGHLIN AND  
MAGISTRATE JUDGE  
SUSAN PARADISE BAXTER

CREDITRON FINANCIAL SERVICES,  
INC, a Pennsylvania corporation, and,  
TELATRON MARKETING GROUP,  
INC., a Pennsylvania corporation,

TRIAL BY JURY DEMANDED

**Electronically Filed**

Defendants

**MOTION TO DISMISS**  
**DEFENDANTS' COUNTERCLAIM**

Plaintiff, Delaware Marketing Partners, LLC, by and through their undersigned counsel, hereby respectfully moves this Honorable Court, pursuant to Fed.R.Civ.P. 12(b)(6), to dismiss Counts I, II, III and IV of Defendants' Counterclaim for the reasons that follow.

1. On January 22, 2004, Plaintiff filed a Complaint asserting various claims based upon a written contract between the parties.

2. On October 31, 2004, Defendants filed their Answer to the Complaint.

3. On September 22, 2006, Defendants filed a Counterclaim setting forth various causes of action against Plaintiff, including breach of contract, mutual mistake of fact, fraud in the inducement and misappropriation of trade secrets.

4. Defendants filed their claim for fraud, fraudulent inducement and/or negligent misrepresentation after the expiration of the applicable two-year statute of limitations.

5. Defendants filed their claim for misappropriation of trade secrets after the expiration of the applicable two-year statute of limitations.

6. Defendants' claim for breach of contract fails to state a claim upon which relief can be granted because Defendants base their claim upon alleged promises, representations and warranties which are beyond the terms of the written agreement governing the parties. Further, the promises, warranties and representations constitute parole evidence which cannot be used to contradict or modify the clear, unambiguous terms of the contract.

7. Defendants' claim of mutual mistake as a basis to rescind the contract fails to meet necessary requirements under Pennsylvania substantive law and fails to state a claim upon which relief can be granted.

8. Plaintiff incorporates herein by reference the attached Exhibits and Plaintiff's Brief in Support of Motion to Dismiss.

WHEREFORE, Plaintiff, Delaware Marketing Partners, LLC, respectfully requests that this Honorable Court enter an Order dismissing Counts I, II, III and IV of Defendants' Counterclaim.

